P 291-97.

G. R. S. IX-5]

Previous references.
L R 66-89
L R 43-99

1897-8.
~~194~~ .
(L R)

File No. 125-97

Serial Nos. 1 — 2

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1 — 2

Part B for October 1897

SUBJECT.

Claim to the Patell office of Jantligolalu Village in the Hosdurga Sub Taluk —

Indexed
W Continuation

W D 1250—GPB—30,000 - 28-1-19

D18.

1-17

Lr. 125-97

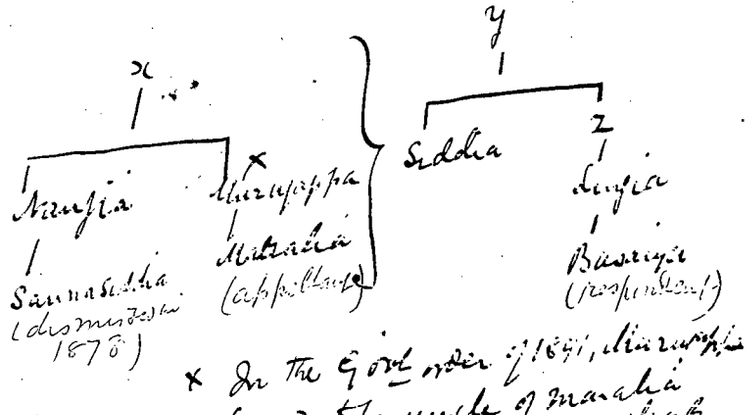
Petition no 580 of 1897-98

(Pet^{r}). Appellant — Marakka
Jantgolaka
Hosdurga Subtaluk

(Respondent — Basaraja)

Subject — Claim to the patel of
Jantgolaka

The appellant and respondent are the representatives of two families who possessed, in 1850, equal shares in the patel village in question. The decree of the Supt was confirmed on appeal to the Commissioner (Encl. no 3808 of 3/7/57, enclosure to Personal no in the Open file). The parties to the decree were Siddia & Nanjia whose relationship to the appellant & respondent respectively is shown in the margin. From the year 1850 to 1874, the representatives of both the families were doing the duties jointly but in the



x In the Govt order of 1891, Marakka is stated the uncle of Marakka but this seems clearly wrong

Until 1862 (the year of the introduction of the Bombay Act) Sannadiddi, the representative of one of the families was appointed sole patel in accordance with the rule that there should be a single patel to each village. Lingia (father of the respondent) the representative of the other family appealed against the above order when he lost it before the Dy Comr but finally the order was held to be ultra vires and did not deprive him of the office.

In the year 1878 Sanna-Siddia was convicted of embezzlement of Govt money and dismissed from office and the appellant was appointed the appellant as patel in anticipation of the DJ Comr's sanction. But the DJ Comr reversed his order and cancelled the appointment and appointed Lingia (father of respondent) to the office on the ground that the claims of a coordinate family were

* Rej. Govt and Comr to judgment

3

Superior Court, on appeal, dismissed the suit.

This order was reversed by the Commissioner on the ground that the decree of 1850 under which Lupia claimed to be a partner was [x] and not acted upon.

On second appeal, the Chief Comr. restored the D.C. Comr's order. This was in 1880.

= In 1884, Lupia got the appointment transferred in the name of Yesu, the respondent. In 1889 the appellant brought a suit for the recovery of ⅓ share in the patels & for being permitted to do duty by turns with the respondent. The Asst. Comr decreed the claim and directed the two families to officiate alternately for a period of 5 years each.

[x] This does not seem to have been the case

The Asst Comr's judgment was based on an opinion pointed out as erroneous by the BComr subsequently - that the Govt had approved & and introduced the system of appointment by rotation

On appeal, the BComr reversed the Asst Comr's decree on the ground that the appellant's suit was barred and that the discharge of debts by him was nowhere recognised by Govt

On second appeal by Govt, it was held that the BComr's view that the suit was barred was not correct, that the most equitable course was to ignore the transfer made by Lingaraja & to leave the appellant to renew his claims on the death of Lingaraja

[The above order is explained by a reference to the Hindu law & practice under which the succession to the office of Vidyāvāchaspati is traced from the original birthday (in accordance with Hindu law) & not from the death of each holder. Thus there is a sheffling of cards at the death of each office-holder. The Board of Revenue held the contrary view but was overruled by the Madras Govt. The order was passed on a reference by the Board of Revenue to Govt in 1894]

Rev. Sewell

= Sujja deceased & have died early in 1897 & the Govt has appointed his son Basaya (Visvanadha) to the vacant office. The present appeal is against this order.

Subd LC Gonville

25/9/97

† The rule is explained by Mr Sewell thus "If the office-holder A dies & leaves a son B, & then if the son B of another office-holder C dies before A should be known, the office would go to C & not to B"

The order of the Court is according to the present practice & quite correct. The appointment of the Vidvat Vinodam cannot be altered. The petitioner's appeal must be rejected.

30.9.97

Mr Pattabhi
1/10/97
Read 6/10
Off Endt prep
Subt
6/10/97

Ry Rm.
25.9.97.

No. 580

Name of Petitioner Mountcastle Albert Jesse

Village Nithipalaiyam

Taluk Kodaikanal

District Madura Collectorate

Date of Arzi 24-8-97

Date of Receipt 24-8-97

Date of Disposal

No. of Enclosures Nil

ABSTRACT.

The petitioner appeals against the order of the Deputy Commissioner of Madura Division, dated 5/8/97 regarding the Patel of the Nithipalaiyam village.

The order appealed against is as follows:

The petitioner states as follows:

1. At present the fresh of the case is suspended.

2. Though the appellant and the respondent belong to two different families, they are hereditary to the office. Their ancestors were doing the duties together till 1879, when one Patel was ordered to be appointed.

3. Petitioner's Cousin was appointed to the office, and he was carrying on the duties till his dismissal in 1878.

4. Probably with the view of giving the other bakdar a chance, the Respondent's father was appointed in 1880.

5. He did the duties for 16 years.

Though petitioner [illegible] divided Council of the dismissed Patel and so much he ought to have been appointed under Circular No 5 of 1872-73 Rule 7, he has had no chance of looking after his duties for this long period.

6. Of the Deputy Commr's other non-appeals against were confirmed [illegible] part of the appeal were ordered to be continued to the Respondent and his descendants, the Appellant and his descendants will have no chance of getting the appeal, and the recognition of the Appellant bak will have no effect.

7. The Government Endorsement No 288 dated 16/3/91 directs that the petitioner must renew his claim on the death of the Respondent's father while the matter of considering his claim to the office

8. In their despatch in Appeal No 288 dated 20/5/92, the Government did not intend to exclude the Appellant permanently from the office, and so they ignored the transfer effected in 1884 in the name of the Respondent, and left the Appellant to renew his claim on the death of the present Respondent's father.

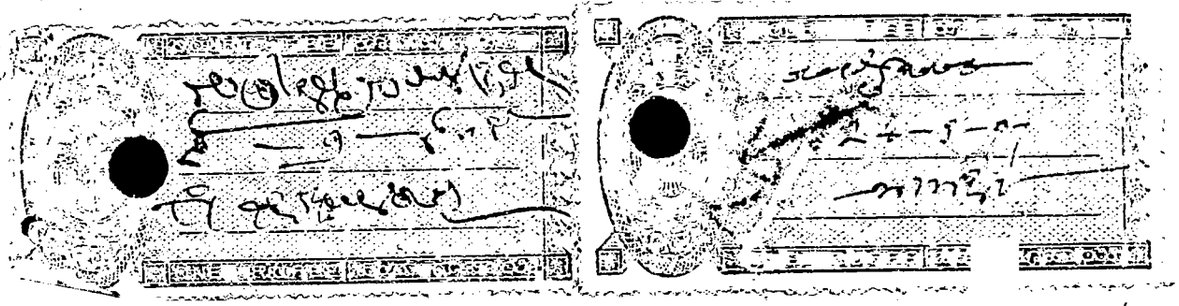
9 As the present Respondent's father died in January last after serving for a period of 16 years, the Appellant may now be given a chance of looking after the duties.

10. The Deputy Commr has not properly considered the Government order No 13017 dated 16/2/91 and Govt Resp No 1067-75 dated 13/12/92. R. 1035

The spirit of the Resp is that no bakdar should be deprived of the opportunity of looking after the duties for a term when a vacancy occurs.

The petitioner prays that the Deputy Comr's order may be set aside and he be appointed Patel, & both he and the Respondent be permitted to look after the duties by rotation in accordance Govt Resp No 835-21 dated 1-5-82, in as both of them are bakdars to the office, one may be appointed to the Patil duties and the other to the Revenue duties in accordance with Govt Resp No 1067-75 dated 3/11/94. R. 1035

King
2/7/97.



Before the Government of Mysore.

Revenue Miscellaneous Appeal Case Number of 1897-98.

Presented by Mr. Lampard for Peter Pereira 24/8/97

24/8/97

MYSORE DEWAN'S OFFICE PETITION DEPARTMENT 580R 24-8-97

Appellant. Kariabiyah son of Mariappiah residing at Santhigolalu Village Bagur Kasimath - Hoskote Sub-Taluq - Bangalore District.

Respondent - Boorah son of Aliji residing in the said Village of Santhigolalu

Under Section 210 of the Mysore Land Revenue Code, the Appellant above named most humbly and respectfully begs to prefer this appeal against the Order passed by the Deputy Commissioner of the Bangalore District on the 5th June 1897, (a certified copy of which order is herewith produced and marked (A)) as regards the assessment due to the Office of Patel

4

of the appellate in village

The grounds of appeal were as follows:—

1. That a memo of the facts of the case is hereunto appended.

2. That the founder of the appellant and the Respondent are disjoint and they were joint tenants of the office in question and were during the under Inquiries till 1874, when, in consequence of the joint order appointing only one pandit for a Village, the appellant's cousin Lakshmi Lakshmi was appointed to the office.

3. On his dismissal in 1878, the appellant ought to have appointed to the office on the deceased vacancy of the Remainder of Pandit under the Government Circular Number 5 of 1872-73. Rule 7 - published at page 267 of the Bombay Revenue Manual of 1886.

4. But the Respondent to further appointed the Chief Commissioner, however, in the appellant's favour, to give him also a share of rent in addition the further relief

belonged to a different from that of the dismissed Pretail and as he was also a saint Hakalar.-

5. The Respondent's father lorked after the duties for a very long period since 1880- since which time the objectionable family had to wait for an opportunity and vacancy for getting the office.

6. That if the office held hitherto by the Respondent's father has now been given to the Respondent under the order of the Deputy Commissioner objected against and if the office is to be held in this manner by the Respondents family from father to son and from son to son's son and so on, in their own lines to the complete exclusion of the right of the objectionable family, then verbally, the recognition of the objectionable family and right to the office will not be given effect to and the objectionant submits it would not be right upon the objectionable family.

7. That in the Government

VIDE

enclosure of dated the 16th February 1891 and referred to in para 10 of the memo of facts hereto appended. The Government have mentioned that the applicant was never heir ex in as the death of the 1st Respondent (that is the present Respondent's father). This shows, the applicant begs to submit, that the Government would consider the applicants claims to the Office.

8. In 1884 the present Respondent's father got the allotment transferred in the name of his son (the present Respondent) Kazaian and the fact that the Government ignored the said transfer and recognized the deceased Kingiali (present Respondent's father) claim to the patel of the village (as mentioned in para 10 of the memo of facts appended to this petition) - adds to the applicant's contention that his claims to the Office would now be considered since the

the said Kinjiah is dead.

9. That the 1st Respondent referred in the Government endorsement, (that is the present Respondent's father) died in January last and hence the Appellant begs to submit that an opportunity has afforded itself for appointing the Appellant to the Office.

10. That, inasmuch, as the Respondent's family did the duties of the office since the year 1880, that is for a period of 16 years, it is nothing but just and equitable that the Appellant should now get the office so that his family may have also a chance of looking after the duties.-

11. That the Legal Secretaries has not properly considered the effect of the Government Order Number 13017/192 dated the 16th February 1891 quoted in his Order.

12. That the Deputy Commissioner does not seem to have considered the Government Proceedings Number 10267—75 R 1055 dated 3rd January 1874, the effect of the said Proceedings being that no Enquiry should be ordered after the lapse of Twelve years and the said Proceedings is quite applicable to the present case to be followed.

Prayer

1. That for the reasons stated in this appeal petition and those mentioned in the memo of grounds hereto appended the Appellant most humbly and respectfully prays that the Order of the Deputy Commissioner requiring the Respondent to the Office may be set aside and the Appellant may be retained to the said Office of Tehsildar as originally was

2 That the Appellant and

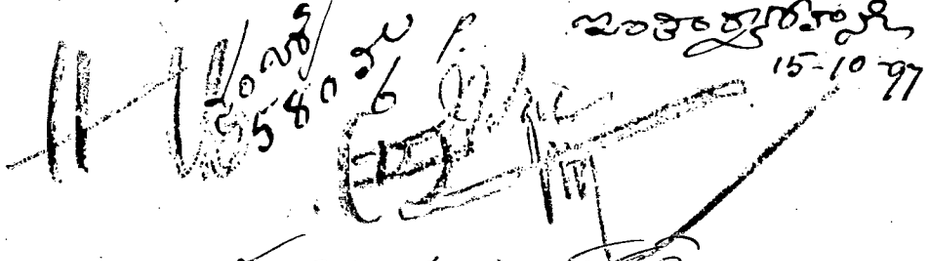
Respondent to hold the duties of the office by rotation each holding the office for a period of 5 years and the Appellant to hold the office first from the date of the decision of this appeal - (with reference to this portion of the prayer the Appellant begs to submit that there is a precedent for this vide Proceedings of the Durbar to His Highness the Maharajah of Mysore (General) Number 838-22 dated 1st May 1882). The material portion of the order is as follows: - "But as both families appear to be entitled to the office arrangements should be made for appointing the Patel alternately from each family if the members of it are found qualified. or -

5. That since both the Appellant and Respondent are joint Hereditary Trustees may be appointed to do the Police duties and the other the Revenue duties

in accordance with the Government Proceedings (Number 1893-75-K 1055) dated 15 August 3rd January 1894.

(In para 3 of the said proceedings the Government say that in the case of two Kaikaras for a single village one may be appointed for Kanium and the other for Talia duties and where there are more, the other Kaikaras should be appointed as vacancies occur so that all at their duties may be in office - and it also say in para 4 that effect shall be given to the above instructions in favour of the seniors of vacancies - and the Government beg to submit that since such a vacancy has occurred owing to the death of the Kaikara referred further effect may now be given to as required for in this case)

[illegible]



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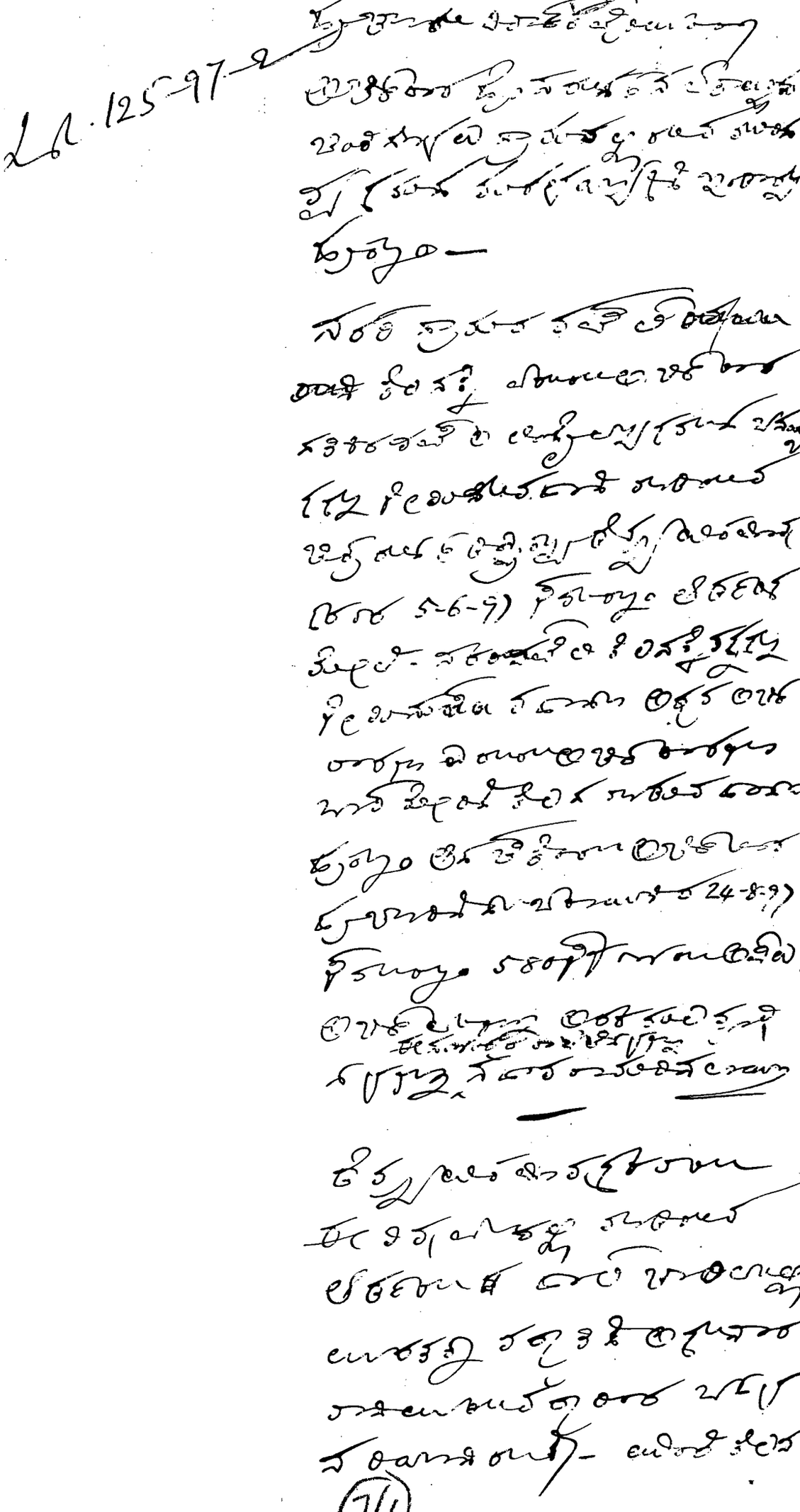
L.R. 125-97



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6/10/97